CIVIL WRIT JURISDICTION CASE No.7002 OF 1990

1. (i) **Most. Badamia Devi** wife of late Vishnu Yadav
1. (ii) Laxmi Devi daughter of late Vishnu Yadav
1. (iii) Lalan Kumar minor son of late Vishnu Yadav
   Under the guardianship of his mother and next friend Most. Badamia Devi.
   All residents of village Bajitpur, P.S. and Anchal Gurua District – Gaya.
2. Ramkishun Yadav, son of Aditya Yadav
3. Ishwar Yadav
4. Baran Yadav, Both sons of Tula Yadav
5. Sandhoo Yadav son of Nathoon Yadav,
   All residents of village Bajitpur, P.S. and Anchal Gurua, District – Gaya.

---------- Petitioners.

Versus

1. The State of Bihar
2. The Joint Director, Consolidation, Gaya.
3. The Deputy Director, Consolidation, Gaya
4. The Consolidation Officer, Gurua, Gaya.
5. Mahadeo Yadav
6. Chandrajit Yadav
   Both sons of late Ramkishun Yadav, resident of Bajitpur, P.S. Gurua, District – Gaya.
7. Most. Sahodari Devi, Wife of late Kali Yadav, resident of village Tetaria, P.S. Sherghati, District – Gaya.
8. Anchhi Devi, wife of Mahadeo Yadav resident of village Kishunpur Bali, P.S. Paraiya, District – Gaya.
9. Urmila Devi, wife of Deo Yadav resident of village – Beldi, P.S. Sherghatti, District – Gaya.
10. Radha Devi, wife of Umar Yadav, resident of village – Tarauchi, P.S. Gurua, District – Gaya.

---------- Respondents.

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For the Petitioner : Mr. Kundan Bahadur Singh, Advocate
For the Respondent : S.C. 8

P R E S E N T

THE HON'BLE MR. JUSTICE AJAY KUMAR TRIPATHI

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A. K. Tripathi, J. Heard learned counsel for the petitioners. There is no representation on behalf of the private respondents even

though notices had been validly served upon them.

The challenge thrown by the petitioners in the present writ application is to the order dated 12.10.1990, which has been passed in Revision Case No. 503 of 1988, contained in Annexure – 3 to the writ application.

Submission of learned counsel for the petitioners is that the Joint Director, Consolidation, Gaya, has exercised the revisional power beyond his ambit and scope of the litigation in the following facts and circumstances of the case.

As per the averments and assertions made in the writ application the petitioners ancestors and the private respondents ancestors by an unregistered deed of exchange made in the year 1937, exchanged the piece and parcel of land, details of which are reflected in paragraph no. 4 & 5 of the writ application. The parties came in possession and they were in occupation of the land and have inherited it also over a period of time.

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The reflection of this fact is also there in the records of revisional survey but somewhere along probably by mistake or some greed when the consolidation proceeding started, objections came to be filed under section 10(4) of the Bihar Consolidation of Holdings and Prevention of Fragmentation Act, 1956 (hereinafter referred to as the 'Act'), by both the sides. The objection of the petitioners was registered as case no. 150 of 1985 and the objection filed by the private respondents was

registered vide case no. 163 of 1985. Subsequently it seems better sense prevailed and both these petitions came to be rejected because the parties agreed and accepted the possession of the respective lands and the deed of exchange made way back in the year 1937. The two orders passed in this regard are Annexure – 1 & 1/A.

After the passing of the order contained in Annexure – 1, the petitioners accepted the order and it attained finality, but the private respondents decided to challenge the order dated 12.12.1986, which was passed in case no. 163 of 1985 (Annexure – 1/A). An appeal therefore, came to be filed before the Deputy Director, Consolidation, Gaya, and the appeal was decided by an order dated 12.01.1988, which is Annexure – 2 to the writ application.

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Learned counsel for the petitioners has taken the court through the order passed in appeal and has tried to demonstrate that the appellate authority, despite the stated position in Annexure – 1 and 1/A, examined the matter in its entirety. The background to the litigation, claim and counter claim and the possession accepted by the parties in terms of Annexure – 1 and 1/A. The Appellate Court categorically held that the conduct of the private respondents amounted to approbate and reprobate and further the challenge was also hit by principle of *res judicata*.

Irrespective of the other reasoning the Appellate

Authority came to a considered decision that in the background to the dispute and the accepted position by the parties before the Consolidation Officer, there was no occasion to interfere with the order.

The private respondents thereafter filed a revision under section 35 of the Act and this revisional order passed by the Joint Director, Consolidation dated 12.10.1990, which is under challenge before this Court.

Submission of learned counsel for the petitioners is that the power of revision has been wrongly exercised by the revisional authority because he has not rendered his opinion based on any major legal infirmity pointed out in the two orders specially the order in appeal. The Revisional Court has tried to make out a kind of a new case by throwing serious doubt over the deed of exchange executed way back in the year 1937 on the ground that it is not a registered document and the same could not be relied upon, when it was neither the case of the petitioners nor the respondents that the exchange of the lands had not taken place and that they were in occupation of the property based on such a family arrangement arrived at from generation to generation. The only reasoning given by the Revisional Authority for interference with the order of the Appellate Authority is what has been stated upon above.

The court comes to a considered opinion that the decision which has been rendered by the Revisional Authority

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has ignored the basic findings which had already been arrived at and settled before the two forums below. Revisional power would not be exercised in a casual manner. It was not open to the Revisional Authority to interfere with the appellate order when nothing substantive in terms of error of law or procedure was pointed in the order.

Annexure – 3 dated 12.10.1990 is set aside. The Writ Application is allowed in the above background.

Patna High Court
The 12th Day of
December, 2008
NAFR/AFR,
Rajeev/

(Ajay Kumar Tripathi, J.)

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